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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Edward Sistrunk, Sr. (aka Omar Askia Ali)

Plaintiff

vs.

U.S. Department of Justice, Janice G. McLeod,
Associate Director

:
: CIVIL ACTION
: No.

: **09** **2593**
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CIVIL ACTION COMPLAINT

Jurisdiction

1. Plaintiff brings the instant suit under the Freedom of Information Act (FOIA), 5 U.S.C. Sec 552(a)(4)(B), permitting de novo review of Agency decisions to withhold disclosure of requested documents, the Administrative Procedures Act, 5 U.S.C. Sec. 706 and the First and Fourteenth Amendments to the U.S. Constitution.
2. Venue is proper pursuant to 28 U.S.C. Sec. 1331 & 1361 in that the Defendants do business in the Eastern District of Pennsylvania and the underlying criminal cause of action arose in Philadelphia. Therefore, the instant cause of action properly could be considered as arising there as well.
3. The District Court has jurisdiction to review *de novo* the Defendant Agency's decision to withhold documents from FOIA disclosure. 5 U.S. C. sec 552(a)(4)(B).

Parties

4. Plaintiff, Edward Sistrunk, Sr. is an adult citizen of Pennsylvania currently incarcerated at SCI Mahanoy, PA under inmate number AF0814.
5. Defendant, U.S. Department of Justice, is an independent agency of the United States, and has possession of, and control over, the records that Plaintiffs seeks. Its offices are located at 200 Chestnut Street, #208, Philadelphia, Pennsylvania 19106. Janice G. McLeod, is the Associate Director of the Defendant Agency.

Facts

6. On January 4, 1971 the Dubrow Furniture Store on South Street in Philadelphia was robbed by eight men. During the incident the assailants tied up, beat and/or shot several employees, set several fires and ultimately killed a man.
7. During the material periods of time certain high ranking members of the Philadelphia Black Mafia were attempting to use Mosque 12 and its' members to obtain and sell illegal drugs. Plaintiff was at all times material a member of Mosque 12 who was vehemently and very vocally opposed to the sale of drugs.
8. It is believed and averred that in order to eliminate the opposition within the Mosque, one or more of high ranking Philadelphia Black Mafia members conspired to falsely identify the Plaintiff as one of the eight suspects in the Dubrow Furniture Store robbery.
9. Based upon information obtained through prior FOIA requests, Plaintiff has learned that it was likely that he was falsely identified as a suspect in the Dubrow Furniture

Store robbery by a confidential informant (PH983-C¹) , who it is believed and averred was a member of the Philadelphia Black Mafia.²

10. Based in significant part upon information provided by this informant, Police arrested only three of the eight alleged suspects: Nudie Mims (aka Abdul Ameen Jabbar), Ronald X. Boelter (Ahmad Abdu Sabur) and the Plaintiff, Edward Sistrunk, Sr. (aka Omar Askia Ali).
11. Despite Plaintiff's assertions of innocence at the trial he (and the other two suspects) were convicted and sentenced to life imprisonment on a variety of charges.
12. In 2005, Penn State Professor Sean Patrick Griffin published the 'definitive' treatise on the Philadelphia Black Mafia entitled "Black Brothers, Inc. The Violent Rise and Fall of Philadelphia's Black Mafia."
13. According to the comprehensive source citations contained at the end of each chapter, the information he relied upon in that book came directly from law enforcement officials.
14. According to Professor Griffin, law enforcement agencies were routinely getting inside information concerning the struggle for power within the Mosque and among Mafia members related to drug and other rackets. (Griffin, 2005).
15. On February 7, 2005 Plaintiff, by and through his counsel, made a request pursuant to the Freedom of Information Act for F.B.I. documents that were specifically referenced and/or cited by Professor Sean Patrick Griffin in his book. It is believed

¹ The CI Identifier Number was contained in a document previously obtained from the Federal Bureau of Investigation.

² The privilege precluding disclosure of informants is a limited privilege. Disclosure is required where it may be relevant and helpful to the defense or is essential for a fair

and averred that the requested documents would establish Plaintiff's actual innocence.

16. On March 28, 2008, the Defendant Agency advised Plaintiff that they had located two documents within the scope of the request: Memorandum, Kenneth A. Bravo, Attorney-in Charge, Philadelphia Strike force to William S. Lynch, Chief, Organized Crime and racketeering Section, Criminal Division, dated 8/29/74; 3 pages; and Draft unsigned Grand Jury Indictment; 2 pages.³ (P1).
17. The Defendant Agency withheld the above two documents pursuant to 5 U.S.C. 552(b)(3), (5), (6) and (7)(C). (P1)
18. On April 3, 2008 Plaintiff timely appealed the above agency decision to the Office of Information and Privacy, U.S. Department of Justice. It was assigned appeal number 08-1485.
19. On December 9, 2008 the U.S. Department of Justice, Office of Information and Privacy, by and through Associate Director Janice Galli McLeon denied Plaintiff's appeal. (P2)
20. The instant civil action is timely filed pursuant to 28 U.S.C. sec.2401 within six months of the December 9, 2008 denial by the U.S. Department of Justice of Appeal No. 08-1485; Request No. CRM-2005500203F.

determination of a cause. *U.S. v. Morris*, 568 F.2d 396 (1978); *Roviano v. U.S.* 353 U.S. 53, 77 S.Ct. 623 (1956).

³ They additionally advised that they had located records that originated with the F.B.I. which they referred to the originating office for response. No documents were ever provided.

COUNT I

Freedom of Information Act, 5 U.S.C. Sec 552(a)(4)(B)

21. Paragraphs 1 through 19 are incorporated herein by reference, as though each were fully set forth herein at length.
22. Voluntary disclosure of documents, either in whole or in part, to third parties has been held to waive FOIA exemptions for those documents. *North Dakota v. Andrus*, 581 F.2d 177, 180-82 (8th Cir. 1978); *Mead Data Central, Inc. v. United States Dep't of the Air Force*, 184 U.S. App. D.C. 350, 566 F.2d 242, 253 (D.C.Cir. 1977); *Julian v. United States Dep't of Justice*, 806 F.2d 1411, 1419 n. 7 (9th Cir. 1986)(alternative holding), *aff'd*, 486 U.S. 1, 108 S. Ct. 1606, 100 L. Ed. 2d 1 (1988). See also *Department of the Air Force v. Rose*, 425 U.S. 352, 357 n. 4, 48 L. Ed. 2d 11, 96 S. Ct. 1592 (1976).
23. Plaintiff avers that Defendants have waived any privilege of non-disclosure/exemption from disclosure provided in the Freedom of Information Act by the prior disclosure of this same information to other members of the public- specifically to Professor Sean Patrick Griffin.
24. The withheld information has already been specifically revealed to the public and it appears to duplicate that being withheld." *United States Student Ass'n v. CIA*, 620 F. Supp. 565 (D.D.C. 1985); *Dow, Lohnes & Albertson v. Presidential Comm'n*, 624 F. Supp. 572 (D.D.C. 1984); *Afshar v. Department of State*, 226 U.S. App. D.C. 388, 702 F.2d 1125, 1133 (D.C.Cir. 1983).

WHEREFORE, Plaintiff demands equitable relief. Specifically, Plaintiff demands that the Court 1) permit Plaintiff to conduct limited discovery and/or 2) Order the Defendant to provide the requested documents to the Plaintiff.


COUNT II

42. U.S.C. sec. 1983 and the First and Fourteenth Amendments to the U.S. Constitution

25. Paragraphs 1 through 24 are incorporated herein by reference, as though each were fully set forth herein at length.
26. Plaintiff believes and avers that Defendant Agency's refusal to disclose the above referenced documents violates his First Amendment right to information and free speech and his Fourteenth Amendment right to due process/a fair trial and equal protection of the law.
27. Based upon the belief that the aforementioned information was disclosed to a third party (Professor Griffin), it violates Plaintiff's constitutional rights for the Defendants to now refuse to disclose the same information to him.

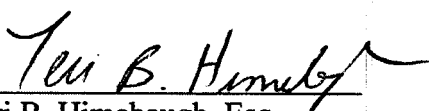
WHEREFORE, Plaintiff demands equitable relief. Specifically, Plaintiff demands that the Court 1) permit Plaintiff to conduct limited discovery and/or 2) Order the Defendant to provide the requested documents to the Plaintiff. Plaintiff also seeks attorney fees and costs related to the instant suit pursuant to 42 U.S. C. 1988.

RESPECTFULLY SUBMITTED,

BY: 
TERI B. HIMEBAUGH, ESQUIRE
Attorney for the Plaintiff

VERIFICATION

The undersigned counsel for the Plaintiff hereby verifies under the pains and penalties of perjury and under the laws of the Commonwealth of Pennsylvania, specifically 18 Pa.C.S. 4904 relating to unsworn falsification to authorities, that the attached civil action complaint is true and correct upon the signer's knowledge and belief.



Teri B. Himebaugh, Esq.



U.S. Department of Justice

Criminal Division

Office of Enforcement Operations

Washington, D.C. 20530

CRM-200500203F

MAR 28 2006

Teri B. Himebaugh, Esq.
220 Stallion Lane
Schwenksville, PA 19473

Dear Mr. Himebaugh:

This is in response to your request of February 7, 2005, for access to records relating to the Philadelphia's Black Mafia.

We have located two documents (items 1-2) within the scope of your request. In light of our review, we have determined to withhold these documents (as described on the enclosed schedule) in full. We are withholding the records indicated pursuant to the following FOIA exemptions set forth in 5 U.S.C. 552(b):

- (3) which permits the withholding of information specifically exempted from disclosure by statute (the applicable statute) is Rule 6(e) of the Federal Rules of Criminal Procedure, which restricts the release of records the disclosure of which would reveal matters occurring before a grand jury);
 - (5) which permits the withholding of inter-agency or intra-agency memorandums or letters which reflect the predecisional, deliberative processes of the Department;
 - (6) which permits the withholding of personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and,
 - (7) which permits the withholding of records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information...
- (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We also located records that originated with the Federal Bureau of Investigation. Pursuant to Department practice we are referring these records to the originating office for its review and direct response to you.

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If you treat this response as a denial of your request, you have a right to an administrative appeal. The appeal should be in writing and addressed to: The Office of Information and Privacy, United States Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, DC 20530-0001. The envelope and letter should be clearly marked, "FOIPA Appeal". Department regulations provide that such appeals must be received by the Office of Information and Privacy within sixty days of the date of this letter. 28 C.F.R. 16.9. If you exercise this right and your appeal is denied, you also have the right to seek judicial review of this action in the federal judicial district (1) in which you reside, (2) in which you have your principal place of business, (3) in which the records denied are located, or (4) for the District of Columbia. If you elect to file an appeal, please include, in your letter to the Office of Information and Privacy, the Criminal Division file number that appears above your name in this letter.

Sincerely,

Thomas C. Taylor
Thomas C. Taylor
Associate Director for Policy
Office of Enforcement Operations
Criminal Division

SCHEDULE OF DOCUMENTS WITHHELD IN FULL
(Refer to Body of Letter for Full Description of Each Exemption)

1. Memorandum, Kenneth A. Bravo, Attorney- in-Charge, Philadelphia Strike Force to William S. Lynch, Chief, Organized Crime and Racketeering Section, Criminal Division, dated 8/29/74; 3 pages. Withheld in full pursuant to 5 U.S.C. 552(b)(5). Withheld in part pursuant to 5 U.S.C. 552(b)(6) and (7)(C).
2. Draft unsigned Grand Jury Indictment; 2 pages. Withheld in full pursuant to 5 U.S.C. 552(b)(3) Rule 6(e) FRCP. Withheld in part pursuant to 5 U.S.C. 552(b)(6) and (7)(C).



U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

DEC 09 2008

Teri B. Himebaugh, Esq.
Law Office of Teri B. Himebaugh
220 Stallion Lane
Schwenksville, PA 19473

Re: Appeal No. 08-1485
Request No. CRM-200500203F
KAH:CGG

Dear Ms. Himebaugh:

You appealed on behalf of your client, Omar Askia Ali, from the action of the Criminal Division of the United States Department of Justice on his request for access to records pertaining to the Philadelphia Black Mafia.

After carefully considering your appeal, I am affirming the Criminal Division's action on your client's request. I have determined that the Criminal Division's response was correct and that it conducted an adequate, reasonable search for records responsive to your client's request.

The Criminal Division properly withheld this information in its entirety because it is protected from disclosure under the Freedom of Information Act pursuant to:

5 U.S.C. § 552(b)(3), which concerns matters specifically exempted from release by statute (in this instance, Rule 6(e) of the Federal Rules of Criminal Procedure which pertains to the secrecy of grand jury proceedings);

5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency communications protected by the deliberative process privilege and the attorney work-product privilege;

5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties; and

5 U.S.C. § 552(b)(7)(C), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties.

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